AMO REPORTS 83-5

REFORM AND REVISION OF CONSERVATION AUTHORITIES IN ONTARIO

Prepared Jointly by:
ASSOCIATION OF CONSERVATION AUTHORITIES OF ONTARIO
and
ASSOCIATION OF MUNICIPALITIES OF ONTARIO
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ASSOCIATION OF MUNICIPALITIES OF ONTARIO

The Association of Municipalities of Ontario, a non-partisan voluntary organization, is united to promote the values of the municipal government system and the status of the municipal level of government as a vital and essential component of the total intergovernmental framework of Ontario and Canada.

The Association acts as the collective voice of Ontario's municipal governments and is organized to accomplish through cooperation and coordination, what the majority have neither the time nor the resources to do individually.

The Association represents some six hundred (600) municipal governments throughout Ontario. The governing body is composed of some eighty (80) municipal elected and appointed officials, who in turn represent a wide-range of municipal government interest.

The following sections and affiliated municipal professional associations form an important part of the Association's structure and therefore, play an important part in its activities in terms of the Board of Directors, program and policy development:

Association Sections:

* County and Regional Section
* Large Urban Section
* Northern Ontario Section (FONOM/NOMA)
* Rural (ROMA) Section
* Organization of Small Urban Municipalities Section

Association Affiliates:

* Association of Municipal Clerks and Treasurers of Ontario
* Association of Municipal Tax Collectors of Ontario
* Municipal Engineers Association
* Ontario Municipal Administrators Association
* Ontario Municipal Personnel Association
* Ontario Municipal Social Services Association
* Society of Directors of Municipal Recreation of Ontario

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"AMO Reports 83-5" was prepared jointly by the County and Regional Section of AMO and the Association of Conservation Authorities of Ontario, was endorsed by the AMO Board of Directors, and was submitted to the Honourable Claude Bennett, Minister of Municipal Affairs and Housing and the Honourable Alan Pope, Minister of Natural Resources, on July 14, 1983.

REFORM AND REVISION OF CONSERVATION AUTHORITIES IN ONTARIO

1. INTRODUCTION

In 1980 the Association of Municipalities of Ontario (AMO) and the Association of Counties and Regions of Ontario (ACRO) published reports examining the role and mandate of conservation authorities. Both reports stated concerns related to the accountability of, membership on and responsibilities and powers of conservation authorities.

Realizing that many of the problems identified in the 1980 reports are still relevant in 1983 AMO, through its County and Regional Section, entered into discussions with representatives of the Association of Conservation Authorities of Ontario (ACAO) in an attempt to resolve the issues which had been identified. Those discussions culminated in the preparation of the following report.

This report addresses the issues of representation, mandate and accountability and recommends changes which AMO believes would foster a co-operative approach between municipalities and conservation authorities with respect to watershed management and land use planning.

2. ISSUES

2.1 Municipal Representation

Section 2(2) of the Conservation Authorities Act stipulates the number of representatives that each municipality may appoint to a conservation authority of which they are a member, according to the population of the municipality. Sections 14(2) and (5) establish circumstances under which municipal representation on any given authority may be altered. Other sections in the Conservation Authorities Act contain provisions related to the appointment of municipal representatives in those areas governed by regional governments and in specific conservation authority areas. Still other Acts pertaining to specific municipalities specify the number of municipal representatives which are to be appointed to the conservation authority having juris-

diction within the municipality. This proliferation of legislation and the reluctance on the part of the local and regional municipalities to relinquish their "influence" on the conservation authority has resulted in boards which are often unmanageable in size.

AMO has consistently held the position that the size of conservation authorities has resulted in decision-making by the minority in the form of an executive committee. This is incompatible with the notion of maintaining a co-operative approach between the authorities and member municipalities with respect to watershed planning. Further, it is not conducive to the open exchange of information nor does it foster any feeling of trust between municipal councils and conservation authorities. It should be noted that this is not a concern which has been expressed with respect to all conservation authorities across the province, but it is a concern which the Association felt compelled to address.

In discussions between AMO and ACAO a consensus was reached that a reduction in the size of conservation authorities (i.e. the boards of directors) was needed, with the exception being those authorities with fewer than 15 representatives at the present time. Recognizing the obvious interest which the Ministry of Natural Resources would have with respect to changes to any aspect of conservation authorities, and, recognizing the need to change the present legislation pertaining to conservation authorities in order to implement any changes in the area of municipal representation, and further, given the fact that both AMO and ACAO agree that changes are needed in this area, the Association believes that the Minister of Natural Resources should establish a working group to examine the question of municipal representation, to make recommendations as to a formula or methodology to be employed to determine the number of representatives and to examine the function of the executive committee of a conservation authority.

Therefore AMO recommends:

1. That the Minister of Natural Resources establish a working group composed of representatives from the Ministry of Natural Resources, the Association of Municipalities of Ontario and the Association of

Conservation Authorities of Ontario to develop a formula/methodology for determining municipal representation on conservation authorities in Ontario and to examine the function of the executive committee within a conservation authority and the relationships of this committee to the general membership of an authority.

2.2 Provincial Representation

Section 14(6) of the Conservation Authorities Act authorizes Cabinet to appoint a maximum of three members to any conservation authority that receives a grant under Section 40. Section 19(3) further authorizes Cabinet to appoint one member to the executive of any conservation authority that receives a grant under Section 40. This latter appointment must be a person who has been appointed as a member of the authority.

The concern of the Association lies in the rationale for maintaining provincial representation on local conservation authorities. While the province seems to feel the need for control through representation, it actually exercises its most effective control through the grant approval process. This fact is evident in other municipal services such as children's aid societies, social services, roads and homes for the aged. It is through the grant process and not through representation on council or boards that the provincial government exercises control in these matters. There seems to be little rationale for having Provincial representation on conservation authorities when these other services, especially children's aid, are provided without any similar, direct, Provincial Government involvement.

Therefore, AMO recommends:

2. That Section 14(6) and Section 19(3) of the Conservation Authorities Act be deleted.

2.3 Municipal Appointees

Municipal councils are responsible for appointing representatives to their respective conservation authorities in the numbers prescribed, the only qualification being that the individual appointed be a resident of a municipality participating in the authority. Council may also choose the term of the appointment provided it is not more than three (3) years in length.

As such, council has the authority to appoint elected or non-elected representatives to the conservation authority. Council must exercise this authority in a responsible manner, appointing an individual(s) that will represent the views of the municipality effectively and someone who will inform council regularly as to the activities of and decisions made by the authority. At the same time council should be given the authority to terminate the appointment of any individual who is judged by council not to be satisfying these two criteria. The present wording of the Act does not give councils this explicit authority.

Therefore, AMO recommends:

3. That the Conservation Authorities Act be amended to permit council to terminate the appointment of any person appointed to the conservation authority at any time during the term of the appointment.

2.4 Advisory Board Members

So as to improve accountability further all members of standing, special or ad hoc committees should be appointed from the members of the authority. This would not prevent committees from seeking professional or technical input as required, on an ad hoc basis.

Therefore, AMO recommends:

4. That Section 18(2) of the Conservation Authorities Act be amended to refer to standing committees of an authority and that a new Section be added to the Act prescribing that all members of such committees shall be appointed from the members of the conservation authority.

2.5 Requirements for a Quorum

Section 16(2) prescribes that one-third of the members of an authority constitutes a quorum except where there are fewer than six members on an authority in which case two (2) members would constitute a quorum.

This rather questionable requirement allows for a very small segment of the members to make decisions which could affect the entire watershed. For this reason AMO believes that a minimum of a simple majority of the members should be required for a quorum.

Therefore, AMO recommends:

5. That Section 16(2) of the Conservation Authorities Act be amended to provide that one-half plus one of the members (simple majority) would constitute a quorum for the purposes of any meeting of a conservation authority.

2.6 Mandate

Sections 20 and 21 of the Conservation Authorities Act establish the mandate and powers of conservation authorities to undertake a wide array of programs and projects related to the "... conservation, restoration, development and management of natural resources ...". Much of the discussion that has taken place in recent years, concerning conservation authorities, has centered around the extent of the powers available to them to achieve the above stated mandate.

In 1979, in its Response to the Report of the Working Group on the Mandate and Role of Conservation Authorities, ACRO recommended that the prime function of conservation authorities should be in flood and erosion control and direct water management and that no further responsibilities should be delegated to them. Reports prepared by AMO and the Municipal Liaison Committee around this same time made similar recommendations. This was seen as an effective way to reduce the conflicts which often arose between watershed management objectives and the development of land within municipalities.

While the Association continues to regard flood and erosion control and water management as the primary functions of conservation authorities, it recognizes that the diversity of local situations which exists requires that the authorities be provided with a broad range of powers in order to be effective in achieving these primary goals. The use of this broad range of powers requires a concerted effort on the part of conservation authorities to consult with municipal councils to ensure that councils are fully aware of the programs and activities of the authorities. At the same time municipal councils must appoint persons who are capable of representing the municipalities' interests and expressing the municipalities' concerns. The use of a co-ordinated approach such as this should reduce the number of conflicts which arise between these two bodies with respect to land use.

Therefore AMO recommends:

6. That the mandate and powers of conservation authorities in Ontario as outlined in Sections 20 and 21 of the Conservation Authorities Act (R.S.O. 1980, Chapter 85) be maintained.

   The support of the Association for maintaining, in legislation, a broad mandate for conservation authorities is dependent on the development of a close liaison between conservation authorities and the councils of municipalities within their watersheds. This in turn requires that municipal councils remain cognizant of the need to appoint capable, effective individuals to represent their interests on the conservation authorities.

2.7 Appeal Procedures

Under Section 25 of the Conservation Authorities Act the authority having jurisdiction must determine the extent to which any individual municipality will benefit from a particular project. The relative benefit to be received by each municipality will determine the proportion of costs which each municipality will bear. A municipality may appeal to the Ontario Municipal Board the proportion of the total project costs which the authority has determined should be assigned to it.

Once the apportionment of costs is finalized the municipality is notified of its allocation with respect to the capital expenditure and/or maintenance costs of a particular project. The legislation does not provide a formal appeal process for the municipality to appeal this allocation.

With respect to administration costs, Section 27(3) provides that the authority may levy these costs based on the proportion that the equalized assessment of any municipality (or part) is of the equalized assessment of the entire area under the authority's jurisdiction. There is no appeal with respect to this portion of the annual levy.

The other aspect of appeals with which AMO is concerned relates to the fill, construction and waterway alteration regulations which may be filed by a conservation authority and the applications associated with these. At present there is no provision for anyone but the applicant to appeal a decision of the authority with respect to an application for any of the above noted purposes. The Association believes that a process should be established which would permit the municipality and the Minister of Natural Resources, as well as the applicant, to appeal a decision of an authority with respect to an application for a fill, construction or waterway alteration permit.

Therefore AMO recommends:

7. That the Conservation Authorities Act be amended to provide for an appeal procedure for the Minister of Natural Resources and the municipality, as well as for the applicant, with respect to the decision of a conservation authority concerning applications for fill, construction and waterway alteration permits. This process should require conservation authorities to provide the affected municipalities with a notice of application and a notice of decision.

2.8 Financial Accountability

Further to the question of accountability is the need for greater communication in matters of finance. The Report of the Provincial-Municipal Grants Reform Committee (1976) recommended

that preliminary conservation authority budgets be circulated to all member municipalities for comment before adoption by the Authority.[1] This would give municipal councils an opportunity to scrutinize the details of a budget to which they must contribute and to suggest amendments either directly to the authority or indirectly, through their representative(s) on the authority. This would be a significant step in alleviating the communication problem which seems to exist in some instances.

Therefore, AMO recommends:

8. That the Ministry of Natural Resources' Policy and Procedures Manual for Conservation Authorities be amended to require authorities to circulate a copy of the preliminary budget estimates to all member municipalities for comment prior to the adoption of the budget by the authority, and, if a member municipality deems it necessary, it should have the right to appeal the final budget to the Ontario Municipal Board.

With respect to budget allocations, if in establishing priorities and making budget allocations the conservation authority did not address a flooding problem that existed in a member municipality, but chose rather to give priority to other projects unrelated to flood control, the Association believes that the municipality concerned should be provided with an appeal process, to the Minister, to review the priorities and the budget allocations of the conservation authority.

Therefore, AMO recommends:

9. That municipalities in which flooding problems exist that are not being addressed by the conservation authority be authorized to appeal the priorities and budget allocations of the conservation authority to the Minister of Natural Resources for review.

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1 Province of Ontario, Report of the Provincial-Municipal Grants Reform Committee (1976); Province of Ontario; Page 77, (Recommendation 4.11).

2.9 Voting Procedures

Section 16(1) of the Conservation Authorities Act authorizes the chairman of the authority to have a second or deciding vote in the event of a tie. The Association believes that the voting procedures for conservation authorities should be similar to those outlined in the Municipal Act for municipal councils and that the right of the chairman to a second vote should be removed.

Therefore AMO recommends:

10. That Section 16(1) of the Conservation Authorities Act be deleted and replaced by provisions similar to those outlined in Section 61 of the Municipal Act, R.S.O. 1980, Chapter 302.

11. That provisions similar to those contained in Section 85 of the Municipal Elections Act, R.S.O. 1980, Chapter 308 be added to the Conservation Authorities Act to provide for situations involving a tie vote in the election of any officer of the authority.

3. SUMMARY OF RECOMMENDATIONS

1. That the Minister of Natural Resources establish a working group composed of representatives from the Ministry of Natural Resources, the Association of Municipalities of Ontario and the Association of Conservation Authorities of Ontario to develop a formula/methodology for determining municipal representation on conservation authorities in Ontario and to examine the function of the executive committee within a conservation authority and the relationships of this committee to the general membership of an authority.

2. That Section 14(6) and Section 19(3) of the Conservation Authorities Act be deleted.

3. That the Conservation Authorities Act be amended to permit council to terminate the appointment of any person appointed to the conservation authority at any time during the term of the appointment.

4. That Section 18(2) of the Conservation Authorities Act be amended to refer to standing committees of an authority and that a new Section be added to the Act prescribing that all members of such committees shall be appointed from the members of the conservation authority.

5. That Section 16(2) of the Conservation Authorities Act be amended to provide that one-half plus one of the members (simple majority) would constitute a quorum for the purposes of any meeting of a conservation authority.

6. That the mandate and powers of conservation authorities in Ontario as outlined in Sections 20 and 21 of the Conservation Authorities Act (R.S.O. 1980, Chapter 85) be maintained.

The support of the Association for maintaining, in legislation, a broad mandate for conservation authorities is dependent on the development of a close liaison between conservation authorities and the councils of municipalities within their watersheds. This in turn requires that municipal councils remain cognizant of the need to appoint capable, effective individuals to represent their interests on the conservation authorities.

7. That the Conservation Authorities Act be amended to provide for an appeal procedure for the Minister of Natural Resources and the municipality, as well as for the applicant, with respect to the decision of a conservation authority concerning applications for fill, construction and waterway alteration permits. This process should require conservation authorities to provide the affected municipalities with a notice of application and a notice of decision.

8. That the Ministry of Natural Resources' Policy and Procedures Manual for Conservation Authorities be amended to require authorities to circulate a copy of the preliminary budget estimates to all member municipalities for comment prior to the adoption of the budget by the authority, and, if a member municipality deems it necessary, it should have the right to appeal the final budget to the Ontario Municipal Board.

9. That municipalities in which flooding problems exist that are not being addressed by the conservation authority be authorized to appeal the priorities and budget allocations of the conservation authority to the Minister of Natural Resources for review.

10. That Section 16(1) of the Conservation Authorities Act be deleted and replaced by provisions similar to those outlined in Section 61 of the Municipal Act, R.S.O. 1980, Chapter 302.

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4. ACAO COMMENTS

The Association of Conservation Authorities of Ontario endorses the foregoing report with the following exceptions.

1. ACAO does not support Recommendation 2 which recommends that there not be Provincial appointees to Conservation Authorities.

2. ACAO does not support the clause of Recommendation 8 that states that, if a member municipality deems it necessary, it should have the right to appeal the final budget to the Ontario Municipal Board. The rationale is based on four points.

   i) Such a procedure could result in any municipality appealing the entire budget of the authority including those provisions that have no fiscal impact on the municipality. Given the municipal experience of frivolous applications to the OMB under the Planning Act, ACAO is concerned about an initiative to duplicate the problem.

   ii) Appeal procedures to the OMB already exist for any municipality assessed the costs of capital or maintenance projects by a conservation authority. While levies for administration costs are not subject to appeal, they represent less than 15% of total conservation authorities' expenditures.

   iii) Municipalities, collectively, through their powers of appointment of members to conservation authorities, also control indirectly the power of determining expenditure levels.

   iv) The budgeting process of conservation authorities has a major provincial component through the Ministry of Natural Resources to Management Board of Cabinet. This provincial component operates under such tight, step-by-step constraints that it simply could not function if municipal appeals to the OMB could be arbitrarily launched at any time.

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